

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN FLOYD BEEBE, JR.,

Defendant and Appellant.

C086173

(Super. Ct. No. 17CF00833)

Pursuant to a written plea agreement, defendant John Floyd Beebe, Jr., pleaded no contest to first degree residential burglary and admitted allegations of two prior prison terms and a prior serious felony conviction. After the trial court denied defendant's *Romero*¹ motion to dismiss allegations of seven prior strike convictions, it found the prior strike conviction allegations true and sentenced defendant to an aggregate prison term of 30 years to life.

Defendant now contends the trial court abused its discretion in denying his *Romero* motion. Finding no abuse of discretion, we will affirm the judgment.

BACKGROUND

Defendant stipulated that the factual basis for his plea could be found in the probation report. Accordingly, the facts are taken from the probation report.

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

In February 2017, defendant burglarized a residence in the City of Gridley while residents were under a mandatory evacuation order related to the condition of the Oroville Dam. The stolen items were valued at approximately \$1,270.

Because defendant had recently been released from prison and had a history of committing similar crimes, a police officer contacted his mother, who lived near the victims' residence. Defendant's mother told the officer that defendant stayed with her sometimes and stored items in one of the bedrooms. After receiving consent, the officer searched the bedroom and found several of the stolen items. The following day, officers located defendant and arrested him.

Defendant admitted entering the victims' residence, stealing items, and storing the items at his mother's house. He also admitted committing a separate theft during the mandatory evacuation period.

Pursuant to a written plea agreement, defendant entered a no contest plea to first degree residential burglary (Pen. Code, § 459)² and admitted that he had served two prior prison terms (§ 667.5, subd. (b)) and had a prior serious felony conviction (§ 667, subd. (a)(1)). The parties agreed to a court trial on the prior strike conviction allegations. It was also agreed that defendant's maximum exposure without the strike priors was 13 years while his maximum exposure with the strike priors was 32 years to life.

Prior to the court trial, defendant filed a *Romero* motion asking the trial court to dismiss all seven of the prior strike conviction allegations in the interests of justice. Defendant acknowledged having an extensive criminal history, but argued the current burglary charge was less severe than the prior strike convictions because, unlike the priors, there were no people present during the burglary in this case. He said most of the victims' belongings were returned to them and the crime did not involve the use of

² Undesignated statutory references are to the Penal Code.

violence, force or fear. In addition, defendant noted that he had readily admitted his guilt to the police, had good behavior while incarcerated on the prior strike convictions, and had a criminal history that mostly consisted of burglaries and other crimes related to his addiction to methamphetamine. He added that he was motivated to seek treatment for his drug addiction and to remain crime free because he had a two-year-old daughter. Finally, defendant argued that failing to dismiss the prior strike allegations and sentencing him to 32 years to life would cross the threshold of disproportionate punishment and violate his Eighth Amendment rights.

The People opposed the *Romero* motion, arguing defendant led a life fueled by drugs and theft and had not remained conviction free for any period of time. The People recited defendant's lengthy criminal history as an adult, which dates back to 2003, and consists of numerous misdemeanor and felony convictions. According to the probation report, defendant had multiple juvenile adjudications, and his criminal history as an adult (which spans from 2003 to 2015) consists of numerous felony and misdemeanor convictions and probation violations. The People noted that despite seven prior theft-related strike convictions, defendant continued to engage in such behavior. The People also noted that defendant's behavior was particularly egregious because he stole items from vulnerable victims who had been evacuated due to the expected failure of the Oroville Dam.

The trial court denied the *Romero* motion, explaining: "The Court has broad but not unfettered discretion to dismiss prior convictions under Penal Code Section 1385 and . . . *Romero* Nonetheless, the Court is mindful of the three strike sentencing scheme which is intended to restrict a Court's discretion in sentencing repeat offenders. The striking of a strike prior is an extraordinary exercise of . . . discretion. In choosing to strike a strike, the Court must determine whether in light of the nature and circumstances of the defendant's present felony and the prior serious and violent convictions and the

peculiarities of his background, character and prospects the defendant may be deemed to be outside the spirit of the three strikes law in whole or in part.

“Here, [defendant] appears to fit squarely within the three strikes law because he’s continued to victimize citizens by entering their homes and stealing their property. The Court disagrees with the defense counsel’s argument that the current residential burglary is less serious than the seven prior strikes; six for residential burglary and one for attempted residential burglary because the victims were not present at the time the defendant entered their home. And they were not present because they had been evacuated due to mandatory evacuations. He took advantage of vulnerable victims who fled their homes during an immediate failure of the Oroville dam.

“I do not find the facts of the instant case less egregious than those underlying [the] seven prior strikes.

“Furthermore, [defendant] continued to commit crimes after the completion of [his] parole on the prior strike convictions. Most notably is an identity theft conviction in 2015 . . . which resulted in a state prison conviction. [Defendant was] on post-release community supervision for that conviction at the time [he] committed the instant offense.

“So the Court is going to decline to strike the prior strike conviction[s] and the motion is denied.”

Thereafter, the trial court found true beyond a reasonable doubt the allegations that defendant had seven prior serious felony convictions (§ 667, subd. (a)(1)) that qualified as strikes under the “Three Strikes” law (§§ 667, subd. (d), 1170.12, subd. (b)). The trial court sentenced defendant to an aggregate term of 30 years to life in prison and granted his request for a certificate of probable cause.

DISCUSSION

Defendant contends the trial court abused its discretion in denying his *Romero* motion. We disagree.

Section 1385 gives the trial court authority in furtherance of justice to order an action dismissed. (§ 1385, subd. (a).) In *Romero*, the California Supreme Court held that a trial court may utilize section 1385 to dismiss a prior strike conviction allegation for purposes of sentencing under the Three Strikes law. (*Romero, supra*, 13 Cal.4th at p. 504.) A trial court’s ruling denying a request to dismiss a prior strike conviction allegation “is subject to review under the deferential abuse of discretion standard.” (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*).)

“In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ‘ “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” ’ [Citations.] Second, a ‘ “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Carmony, supra*, 33 Cal.4th at pp. 376-377.)

In *Carmony*, the Supreme Court explained: “ ‘[T]he Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” ’ ” (*Carmony, supra*, 33 Cal.4th at p. 377.) The circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be extraordinary. (*Id.* at p. 378.) Reversal is justified where the trial

court was unaware of its discretion to dismiss a prior strike or considered impermissible factors in declining to dismiss. (*Ibid.*) But where the trial court, aware of its discretion, “ ‘balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance.’ ” (*Ibid.*)

In deciding whether to dismiss a prior strike conviction allegation, a trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

We find no abuse of discretion. In ruling on defendant’s motion, the trial court was aware of its discretion, considered the relevant factors, and reached its decision in conformity with the spirit of the Three Strikes law. The decision was neither irrational nor arbitrary.

DISPOSITION

The judgment is affirmed.

/S/
Mauro, J.

We concur:

/S/
Blease, Acting P. J.

/S/
Renner, J.